

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KARLA AYLEN, DDS PLLC, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

ASPEN AMERICAN INSURANCE
COMPANY,

Defendant.

No.

COMPLAINT—CLASS ACTION

JURY DEMAND

I. INTRODUCTION

Plaintiff, KARLA AYLEN, DDS PLLC (“Aylen”), individually and on behalf of all other similarly situated members of the defined national class, and the defined Washington State subclasses (the “Class Members”), by and through the undersigned attorneys, brings this class action against Aspen American Insurance Company (“Aspen” or “Defendant”) and alleges as follows based on personal knowledge and information and belief:

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one member of the proposed Class and Washington subclass is a citizen of a state different from that of Defendant, the proposed Class

COMPLAINT—CLASS ACTION - 1

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

1 7. Aspen is authorized to write, sell, and issue business insurance policies in all 50
2 States, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. Aspen conducted
3 business within these states by selling and issuing insurance policies to policyholders, including
4 Plaintiff Aylen.

5
6 **IV. NATURE OF THE CASE**

7 8. Due to COVID-19, and a state-ordered mandated closure, Plaintiff cannot provide
8 dentistry services. Plaintiff intended to rely on its business insurance to maintain business
9 income in case of an insured loss. This lawsuit is filed to ensure that Plaintiff and other similarly-
10 situated policyholders receive the insurance benefits to which they are entitled and for which
11 they paid.

12 9. Defendant Aspen issued one or more insurance policies to Plaintiff, including
13 Building, Blanket Dental Practice Personal Property and Income Coverage Part and related
14 endorsements, insuring Plaintiff's property and business practice and other coverages, with
15 effective dates of January 1, 2020 to January 1, 2021.

16
17 10. Plaintiff's business property includes property owned and/or leased by Plaintiff
18 and used for general business purposes for the specific purpose of dentistry and other business
19 activities.

20 11. Defendant Aspen's insurance policy issued to Plaintiff promises to pay Plaintiff
21 for "ALL RISK OF DIRECT PHYSICAL LOSS" to covered property and includes coverage for
22 risks of both "loss of or damage to" covered property.

23
24 12. Defendant Aspen's policy issued to Plaintiff includes Practice Income Coverage,
25 Extra Expense Coverage, Extended Practice Income Coverage and Civil Authority Coverage.

26 13. Plaintiff paid all premiums for the coverage when due.

1 14. On or about January 2020, the United States of America saw its first cases of
2 persons infected by COVID-19, which has been designated a worldwide pandemic.

3 15. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-
4 5, declaring a State of Emergency for all counties in the state of Washington as a result of Covid-
5 19. Thereafter, he issued a series of certain proclamations and order affecting many persons and
6 businesses in Washington, whether infected with COVID-19 or not, requiring certain public
7 health precautions.

8 16. On March 19, 2020, Governor Inslee issued a “PROCLAMATION BY THE
9 GOVERNOR AMENDING PROCLAMATION 20-05: 20-24 Restrictions on Non Urgent
10 Medical Procedures.” dated March 19, 2020, which prohibited dental practitioners from
11 providing dental services but for urgent and emergency procedures:
12

13 WHEREAS, the health care person protective equipment supply chain in
14 Washington State has been severely disrupted by the significant increased use of
15 such equipment worldwide, such that there are now critical shortages of this
16 equipment for health care workers. To curtail the spread of the COVID-19
17 pandemic in Washington State and to protect our health care workers as they
18 provide health care services, it is necessary to immediately prohibit all hospitals,
19 ambulatory surgery centers, and dental orthodontic, and endodontic offices in
Washington State from providing health care services, procedures and surgeries
that require personal protective equipment, which if delayed, are not anticipated
to cause harm to the patient within the next three months.

20 17. On March 23, 2020, Mr. John Weisman, Secretary of Washington State’s
21 Department of Health, issued a list of directives and orders regarding healthcare matters and
22 mandated that all healthcare practitioners, including dental, cease all elective and non-urgent
23 medical procedures and appointments as of the close of business on March 24, 2000, and
24 throughout the duration of the catastrophic health emergency.

25 18. On March 25, 2020, the Washington State Dental Association recommended that
26 all dental practices follow the mandates and orders of the Washington Department of Health and
COMPLAINT—CLASS ACTION - 4

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

1 postpone all non-emergency or non-urgent dental procedures throughout the duration of the
2 catastrophic health emergency.

3 19. On March 30, 2020, Governor Inslee issued Order Number 20-03-30-01 affecting
4 persons and residents within the State of Washington, which includes a “Stay-at-Home Order”
5 requiring all persons living in Washington to stay in their homes or places of residences except
6 under certain specified circumstances.

7
8 20. No COVID-19 virus has been detected on Plaintiff’s business premises.

9 21. Plaintiff’s property sustained direct physical loss and/or damages related to
10 COVID-19 and/or the proclamations and orders.

11 22. Plaintiff’s property will continue to sustain direct physical loss or damage covered
12 by the Aspen policy or policies, including but not limited to business interruption, extra expense,
13 interruption by civil authority, and other expenses.

14 23. Plaintiff’s property cannot be used for its intended purposes.

15 24. As a result of the above, Plaintiff has experienced and will experience loss
16 covered by the Aspen policy or policies.

17 25. Plaintiff contacted its insurance agent to inquire into coverage for its losses
18 covered by the Aspen Policy. Plaintiff was informed by voice message that there was no
19 coverage for its losses.
20

21 26. Upon information and belief, Aspen has denied and will deny coverage to other
22 similarly situated policyholders.
23

24 **V. CLASS ACTION ALLEGATIONS**

25 27. This matter is brought by Plaintiff on behalf of itself and those similarly situated,
26 under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).

1 28. The Classes and Subclasses that Plaintiff seeks to represent are defined as:

2 A. ***Practice Income Breach of Contract Class:*** All persons and entities in the
 3 United States insured under an Aspen policy with Practice Income Coverage who
 4 suffered a suspension of their practice at the covered premises related to COVID-19
 5 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities
 6 and whose Practice Income claim has been denied by Aspen.

7 B. ***Practice Income Breach of Contract Washington Subclass:*** All persons
 8 and entities in the State of Washington insured under an Aspen policy with Practice
 9 Income Coverage who suffered a suspension of their practice at the covered premises
 10 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
 11 authorities and whose Practice Income claim has been denied by Aspen.

12 C. ***Practice Income Declaratory Relief Class:*** All persons and entities in the
 13 United States insured under an Aspen policy with Practice Income Coverage who
 14 suffered a suspension of their practice at the covered premises related to COVID-19
 15 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.

16 D. ***Practice Income Declaratory Relief Washington Subclass:*** All persons
 17 and entities in the State of Washington insured under an Aspen policy with Practice
 18 Income Coverage who suffered a suspension of their practice at the covered premises
 19 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
 20 authorities.

21 E. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
 22 United States insured under an Aspen policy with Extra Expense Coverage who incurred
 23 expenses while seeking to minimize the suspension of business at the covered premises in
 24 25
 26

1 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
2 and/or other civil authorities and whose Extra Expense claim has been denied by Aspen.

3 F. ***Extra Expense Breach of Contract Washington Subclass:*** All persons
4 and entities in the State of Washington insured under an Aspen policy with Extra
5 Expense Coverage who incurred expenses while seeking to minimize the suspension of
6 business at the covered premises in connection with COVID-19 and/or orders issued by
7 Governor Inslee, and/or other civil authorities and whose Extra Expense claim has been
8 denied by Aspen.
9

10 G. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
11 United States insured under an Aspen policy with Extra Expense Coverage who incurred
12 expenses while seeking to minimize the suspension of business at the covered premises in
13 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
14 and/or other civil authorities.
15

16 H. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and
17 entities in the State of Washington insured under an Aspen policy with Extra Expense
18 Coverage who incurred expenses while seeking to minimize the suspension of business at
19 the covered premises in connection with COVID-19 and/or orders issued by Governor
20 Inslee, and/or other civil authorities.
21

22 I. ***Extended Practice Income Breach of Contract Class:*** All persons and
23 entities in the United States insured under an Aspen policy with Extended Practice
24 Income Coverage who suffered a suspension of their practice at the covered premises
25 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
26

1 other civil authorities and whose Extended Practice Income claim has been denied by
 2 Aspen.

3 J. ***Extended Practice Income Breach of Contract Washington Subclass:***

4 All persons and entities in the State of Washington insured under an Aspen policy with
 5 Extended Practice Income Coverage who suffered a suspension of their practice at the
 6 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or
 7 other civil authorities and whose Extended Practice Income claim has been denied by
 8 Aspen.
 9

10 K. ***Extended Practice Income Declaratory Relief Class:*** All persons and

11 entities in the United States insured under an Aspen policy with Extended Practice
 12 Income Coverage who suffered a suspension of their practice at the covered premises
 13 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
 14 other civil authorities.
 15

16 L. ***Extended Practice Income Declaratory Relief Washington Subclass:*** All

17 persons and entities in the State of Washington insured under an Aspen policy with
 18 Extended Practice Income Coverage who suffered a suspension of their practice at the
 19 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or
 20 other civil authorities.
 21

22 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the

23 United States insured under an Aspen policy with Civil Authority Coverage who suffered
 24 a suspension of their practice at the covered premises related to the impact of COVID-19
 25 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities
 26 and whose Civil Authority claim has been denied by Aspen.

1 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons
 2 and entities in the State of Washington insured under an Aspen policy with Civil
 3 Authority Coverage who suffered a suspension of their practice at the covered premises
 4 related to the impact of COVID-19 and/or orders issued by Governor Inslee, and/or other
 5 civil authorities and whose Civil Authority claim has been denied by Aspen.

6
 7 O. ***Civil Authority Declaratory Relief Class:*** All persons and entities in the
 8 United States insured under an Aspen policy with Civil Authority Coverage who suffered
 9 a suspension of their practice at the covered premises related to COVID-19 and/or orders
 10 issued by Governor Inslee, other Governors, and/or other civil authorities.

11 P. ***Civil Authority Declaratory Relief Washington Subclass:*** All persons and
 12 entities in the State of Washington insured under an Aspen policy with Civil Authority
 13 Coverage who suffered a suspension of their practice at the covered premises related to
 14 COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities.

15
 16 29. Excluded from the Class are Defendant's officers, directors, and employees; the
 17 judicial officers and associated court staff assigned to this case; and the immediate family
 18 members of such officers and staff. Plaintiff Aylen reserves the right to amend the Class
 19 definition based on information obtained in discovery.

20
 21 30. This action may properly be maintained on behalf of each proposed Class under
 22 the criteria of Rule 23 of the Federal Rules of Civil Procedure.

23 31. **Numerosity:** The members of the Class are so numerous that joinder of all
 24 members would be impractical. Plaintiff is informed and believes that each proposed Class and
 25 Subclass contains hundreds of members. The precise number of class members can be
 26 ascertained through discovery, which will include Defendant's records of policyholders.

1 32. **Commonality and Predominance:** Common questions of law and fact
2 predominate over any questions affecting only individual members of the Class. Common
3 questions include, but are not limited to, the following:

4 A. Whether the class members suffered covered losses based on common
5 policies issued to members of the Class and Subclass;
6

7 B. Whether Aspen acted in a manner common to the Class and Subclass
8 wrongfully denied claims for coverage relating to COVID-19 and/or orders issued by
9 Governor Inslee, other Governors, and/or other civil authorities;

10 C. Whether Practice Income Coverage in Aspen's policies of insurance
11 applies to a suspension of practice relating to COVID-19 and/or orders issued by
12 Governor Inslee, other Governors, and/or other civil authorities;
13

14 D. Whether Extra Expense Coverage in Aspen's policies of insurance applies
15 to efforts to minimize a loss relating to COVID-19 and/or orders issued by Governor
16 Inslee, other Governors, and/or other civil authorities;

17 E. Whether Extended Practice Income Coverage in Aspen's policies of
18 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued
19 by Governor Inslee, other Governors, and/or civil authorities;
20

21 F. Whether Civil Authority Coverage in Aspen's policies of insurance
22 applies to a suspension of practice relating to COVID-19 and/or orders issued by
23 Governor Inslee, other Governors, and/or civil authorities;

24 G. Whether Aspen has breached its contracts of insurance through a blanket
25 denial of all claims based on business interruption, income loss or closures related to
26

COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities;

H. Whether, because of Defendant's conduct, Plaintiff and the class members have suffered damages; and if so, the appropriate amount thereof; and

I. Whether, because of Defendant's conduct, Plaintiff and the class members are entitled to equitable and declaratory relief, and if so, the nature of such relief.

33. **Typicality:** Plaintiff's claims are typical of the claims of the members of the classes. Plaintiff and all the members of the classes have been injured by the same wrongful practices of Defendant. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the members of the Class and are based on the same legal theories.

34. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of the classes and has retained class counsel who are experienced and qualified in prosecuting class actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the Class.

35. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are common to all members of the class. The prosecution of separate actions by individual members of the classes would risk inconsistent or varying interpretations of those policy terms and create inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff could also impair the ability of absent class members to protect their interests.

36. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:** Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members

1 of the proposed classes making injunctive relief and declaratory relief appropriate on a classwide
2 basis.

3 37. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is
4 superior to all other available methods of the fair and efficient adjudication of this lawsuit. While
5 the aggregate damages sustained by the classes are likely to be in the millions of dollars, the
6 individual damages incurred by each class member may be too small to warrant the expense of
7 individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions
8 and the court system would be unduly burdened by individual litigation of such cases. A class
9 action would result in a unified adjudication, with the benefits of economies of scale and
10 supervision by a single court.
11

12 VI. CAUSES OF ACTION

13 Count One—Declaratory Judgment

14
15 *(Brought on behalf of the Practice Income Coverage Declaratory Relief Class, Practice*
16 *Income Coverage Declaratory Relief Washington Subclass, Extra Expense Declaratory Relief*
17 *Class, Extra Expense Declaratory Relief Washington Subclass, Extended Practice Income*
Declaratory Relief Class, Extended Practice Income Declaratory Relief Washington Subclass,
Civil Authority Relief Class, and Civil Authority Relief Washington Subclass)

18 38. Previous paragraphs alleged are incorporated herein.

19 39. This is a cause of action for declaratory judgment pursuant to the Declaratory
20 Judgment Act, codified at 28 U.S.C. § 2201.

21 40. Plaintiff Aylen brings this cause of action on behalf of the Practice Income
22 Coverage Declaratory Relief Class, Practice Income Declaratory Washington Subclass, Extra
23 Expense Declaratory Relief Class, Extra Expense Declaratory Relief Washington Subclass
24 Extended Practice Income Declaratory Relief Class, Extended Practice Income Declaratory
25
26

1 Relief Washington Subclass, Civil Authority Declaratory Relief Class, and Civil Authority
2 Declaratory Relief Washington Subclass.

3 41. Plaintiff Aylen seeks a declaratory judgment declaring that Plaintiff Aylen's and
4 class members' losses and expenses resulting from the interruption of their business are covered
5 by the Policy.

6 42. Plaintiff Aylen seeks a declaratory judgment declaring that Aspen is responsible
7 for timely and fully paying all such claims.

8
9 **Count Two—Breach of Contract**

10 *(Brought on behalf of the Practice Income Coverage Breach of Contract Class,*
11 *Practice Income Coverage Breach of Contract Washington Subclass, Extra Expense Breach*
12 *of Contract Class, Extra Expense Breach of Contract Washington Subclass, Extended*
13 *Practice Income Breach of Contract Class, Extended Practice Income Breach of Contract*
Washington Subclasses, Civil Authority Breach of Contract Class, and Civil Authority Breach
of Contract Washington Subclass)

14 43. Previous paragraphs alleged are incorporated herein.

15 44. Plaintiff Aylen brings this cause of action on behalf of the Practice Income
16 Coverage Breach of Contract Class, Practice Income Breach of Contract Washington Subclass,
17 Extra Expense Breach of Contract Class, Extra Expense Breach of Contract Washington
18 Subclass, Extended Practice Income Breach of Contract Class, Extended Practice Income Breach
19 of Contract Washington Subclass, Civil Authority Breach of Contract Class, and Civil Authority
20 Breach of Contract Washington Subclass.

21 45. The Policy is a contract under which Plaintiff Aylen and the class paid premiums
22 to Aspen in exchange for Aspen's promise to pay Plaintiff Aylen and the class for all claims
23 covered by the Policy.

24 46. Plaintiff Aylen has paid its insurance premiums.
25
26

1 47. Plaintiff Aylen has been denied coverage for its losses covered by the Aspen
2 policy.

3 48. Upon information and belief, Aspen has denied, and will continue to deny
4 coverage for other similarly situated policyholders.

5 49. Denying coverage for the claim is a breach of the insurance contract.

6 50. Plaintiff Aylen is harmed by the breach of the insurance contract by Aspen.
7

8 **1. PRAYER FOR RELIEF**

9 1. A declaratory judgment that the policy or policies cover the plaintiff's losses and
10 expenses resulting from the interruption of the Plaintiff's business by COVID-19 and/or orders
11 issued by Governor Inslee, other Governors, and/or other authorities.

12 2. A declaratory judgment that the defendant is responsible for timely and fully
13 paying all such losses.

14 3. Damages.

15 4. Pre-judgment interest at the highest allowable rate.

16 5. Reasonable attorney fees and costs.

17 6. Such further and other relief as the Court shall deem appropriate.
18

19 **VII. JURY DEMAND**

20 Plaintiff demands a jury trial on all claims so triable.
21
22
23
24
25
26

DATED this 13th day of May, 2020.

KELLER ROHRBACK L.L.P.

By: s/ Amy Williams-Derry

By: s/ Lynn L. Sarko

By: s/ Ian S. Birk

By: s/ Gretchen Freeman Cappio

By: s/ Irene M. Hecht

By: s/ Maureen Falecki

By: s/ Nathan L. Nanfelt

Amy Williams-Derry, WSBA #28711

Lynn L. Sarko, WSBA #16569

Ian S. Birk, WSBA #31431

Gretchen Freeman Cappio, WSBA #29576

Irene M. Hecht, WSBA #11063

Maureen Falecki, WSBA #18569

Nathan Nanfelt, WSBA #45273

1201 Third Avenue, Suite 3200

Seattle, WA 98101

Telephone: (206) 623-1900

Fax: (206) 623-3384

Email: awilliams-derry@kellerrohrback.com

Email: lsarko@kellerrohrback.com

Email: ibirk@kellerrohrback.com

Email: gcappio@kellerrohrback.com

Email: ihecht@kellerrohrback.com

Email: mfalecki@kellerrohrback.com

Email: nnanfelt@kellerrohrback.com

By: s/ Alison Chase

Alison Chase, *pro hac vice* forthcoming

801 Garden Street, Suite 301

Santa Barbara, CA 93101

Telephone: (805) 456-1496

Fax: (805) 456-1497

Email: achase@kellerrohrback.com

Attorneys for Plaintiff

4817-1314-0668, v. 1